

RESOLUTION NO. 16-XXX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS RECOMMENDING THAT THE CITY COUNCIL APPROVE THE ENVIRONMENTAL ASSESSMENT EA16-0002 AND SITE DEVELOPMENT PERMIT SD15-0014 FOR THE PROJECT LOCATED AT 730-750 EAST CAPITOL AVENUE

WHEREAS, on June 3, 2008, the City Council of the City of Milpitas (the “City”), acting as the lead agency, certified an environmental impact report (EIR) prepared to study the proposed Transit Area Specific Plan (SCH#2006032091) pursuant to the California Environmental Quality Act (CEQA, codified at Public Resources Code Sections 21000, *et seq.*, as further governed by the CEQA Guidelines, 14 California Code of Regulations Sections 15000, *et seq.*), and thereafter approved the TASP to guide development in the Transit Area of the City near the future Milpitas BART Station; and

WHEREAS, the TASP EIR found the TASP to be self-mitigating, and noted that some potentially significant impacts associated with the TASP could be avoided or reduced to levels that are not significant through implementation of the policies or mitigation measures identified in the Draft EIR; and

WHEREAS, on June 16, 2015 a preliminary application was submitted and on December 16, 2015, a site development application was submitted by Rachel Green, of Anton Development Company LLC, to construct two multi-story mixed use apartment buildings containing a total of 582 apartments and 5,000 square feet of ground floor neighborhood retail space and associated improvements on 9.38 acres located at 730-750 E. Capitol Avenue (the “Project”). The zoning of the property is Urban Residential (R5) with a Transit Oriented Development (TOD) overlay and is located within the Trade Zone/Montague subdistrict of the TASP (APN 086-37-015, -026, -027); and

WHEREAS, an initial environmental assessment of the Project was completed in accordance with the California Environmental Quality Act (CEQA) and determined that the project is exempt from further environmental review pursuant to Section 15168(c)(2) of the CEQA Guidelines because of its consistency with the certified EIR for the Transit Area Specific Plan adopted on June 3, 2008 by the City Council, and;

WHEREAS, on May 11, 2016, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties and unanimously recommended approval to the City Council of the Project; and

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The Planning Commission has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and

other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The Project is covered under the scope of activities approved in the TASP Environmental Impact Report (SCH#2006032091), which was certified by the Milpitas City Council on June 3, 2008. Environmental Assessment EA16-0002 confirms that the Project's proposed 582 dwelling units, 5,000 square feet of retail space, and other site improvements fall within the scope of development studied in the TASP EIR and that it involves no (1) substantial changes in the Project which would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) substantial changes with respect to the circumstances under which the Project would be undertaken which would require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of a previously identified significant effect; or (3) new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was certified as complete and which showed that (a) the Project would have one or more significant effects not discussed in the EIR, (b) significant effects previously examined would be substantially more severe than those shown in the EIR, (c) mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects, but the applicant declined to adopt the mitigation measure or alternative, or (d) mitigation measures or alternatives which would be considerably different from those analyzed in the EIR would substantially reduce one or more significant effects on the environment, but the applicant declined to adopt the mitigation measure or alternative, per CEQA Guidelines Section 15162. The Project is therefore exempt from further environmental review pursuant to Public Resources Code Section 21166 and Section 15168(c)(2) of the CEQA Guidelines because of its consistency with TASP EIR.

Section 3: Pursuant to Section 57 of the Zoning Code, the Planning Commission is required to make specific findings before approving a Site Development Permit. Findings shall identify the rationale behind the decision to take a certain action. Each code-required finding is analyzed below.

Section 4: Pursuant to Section XI-10-64.03 (Consideration of Concurrent Applications) of the Milpitas Municipal Code, the entire application, including the Site Development Permit, shall be reviewed and approved by the City Council because the applicant requires an exception to the City's Water Urgency Ordinance to construct a new swimming pool in each of the proposed buildings in the Project, per Section VIII-6-5.08. No findings are specifically required by Section VIII-6-5.08, but the reasons for recommending approval of such an exception are set forth below.

Section 5: In accordance with the City of Milpitas Municipal Code Section XI-10-57.03(F), Site Development Permit (General Findings), the Planning Commission further finds that:

1. The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.

The proposed layout of the site and design of the proposed buildings, structures, and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development in that the Project meets the density and design requirements of the Transit Area Specific Plan approved by the City Council June 2008, and amended December 2011. Given that the project will be surrounded by other developments that are themselves bound to conform to the Transit Area Specific Plan, the proposed Project will necessarily be compatible with its neighbors. This is illustrated in the Project's adherence to the layout and circulation aspects of the Trade Zone/Montague subdistrict, as well as its provision of streetscape and landscape improvements along Capitol Avenue, the Milpitas Boulevard Extension, and the new public street connection to the nearby Lennar project. In addition, the Project's setbacks meet or exceed the minimum setback requirements set forth in the TASP, particularly along the Penitencia Creek Channel, where a 102 setback is proposed. At roughly 62 dwelling units per acre, the Project is within the 41-75 dwelling unit per acre base density standard for the district, and will fit in with surrounding developments built to similar densities. In addition, the proposed 65' maximum height of the buildings is within the 75' limit for the district and will complement other multi-story residential buildings along Capitol Avenue. Residential units are oriented toward major streets, offering a lively and interactive streetscape, and neighborhood serving retail uses on the ground floor of the buildings will attract the foot traffic envisioned by the Transit Area Specific Plan. Residential and retail parking will be provided in garages shielded from street view and do not require any reductions or exceptions.

2. The project is consistent with the Milpitas Zoning Ordinance.

The Project site is zoned R5 (Urban Residential) with a Transit-Oriented Development (TOD) Overlay. The proposed residential uses and ground floor commercial uses, are permitted in the zoning district, and in fact, given the Project's location within the Transit Area Specific Plan planning area, this mix of uses is required. The project also conforms to the TOD Overlay by providing density of nearly 62 dwelling units per acre, which is within the 41-75 units/acre range envisioned by the TOD Overlay when combined with the R5 Zoning District. The height of the two mixed-use buildings is below the maximum permitted for properties with Capitol Avenue frontage and the 75-foot height allowed by the standards of the TOD Overlay. In addition, the Project conforms to the requirement that there be no more than 500 feet between publicly accessible paths of travel for a block, with the longest block dimension between such paths of travel along Capitol Avenue being 473 feet, and the longest such dimension along the Milpitas Boulevard Extension measuring some 410 feet. The Project likewise meets the zoning requirement pertaining to a maximum block size of 4 acres, with the two Project blocks being 2.88 acres and 3.55 acres, respectively.

While the Zoning Ordinance does generally prohibit the construction of new swimming pools, Milpitas Municipal Code Section VIII-6-5.08 explicitly grants the City Council the authority to grant an exception to this prohibition. Given that each of the proposed

swimming pools will serve hundreds of residents and visitors, the Planning Commission recommends the Council grant such an exception here.

3. The project is consistent with the Milpitas General Plan.

The Project site has a General Plan land use designation of Very High Density Transit Oriented Residential. The intent of this designation is to provide high-density housing at a minimum base density of 41 units per acre, and a maximum density of 75 units per acre within close proximity to transit. The Project, offering approximately 62 units per acre, comfortably meets this density requirement, and is situated very near the VTA line and the future BART station. In addition, the General Plan envisions that such properties may include small, local-serving commercial uses on the ground floor level, including retail, restaurants, and personal service uses. The Project offers some 5,000 square feet of neighborhood-serving retail that will fulfill this function. The Project is consistent with the applicable Land Use Element Guiding Principle and Implementing Policies for the Transit Area as follows:

2.a-G-2: Maintain a relatively compact urban form. Emphasize mixed-use development to the extent feasible, to achieve service efficiencies from compact development patterns and to maximize job development and commercial opportunities near residential development.

The Project is an urban infill redevelopment project that redevelops an underutilized site with residential and commercial uses envisioned by the TASP. It is designed as a high density residential development, contributing to a compact, dense urban form. The Project provides both residential and retail elements, providing retail (commercial) opportunities directly adjacent to the residential development.

2.a-G-3: Provide for a variety of housing types and densities that meet the needs of individuals and families.

The Project provides a total of 582 rental units ranging from studios to two-bedroom units. The building at 730 E. Capitol provides the following unit types and sizes: 45 studios (514 sq. ft.); 150 1-bedroom units (697 sq. ft.) and 71 2-bedroom units (1,056 sq. ft.). The building at 750 E. Capitol includes: 30 studios (520 sq. ft.); 168 1-bedroom units (709 sq. ft.) and 118 2-bedroom units (1,103 sq. ft.) The Project provides a variety of housing choices for individuals and families in Milpitas.

2.a 1-31: Develop the Transit area, as shown on the Transit Area Plan, as attractive, high density, urban neighborhoods with a mix of land uses around the light rail stations and the future BART station. Create pedestrian connections so that residents, visitors, and workers will walk, bike, and take transit. Design streets and public spaces to create a lively and attractive street character, and a distinctive identity for each sub-district.

The Project is consistent with this policy as it includes two attractive contemporary multi-story structures with 582 residential units in proximity to the VTA line and future Milpitas BART Station. The Project also includes significant streetscape improvements enabling and encouraging pedestrian and bicycle movement throughout the Trade Zone/Montague subdistrict with connections to the BART and Light Rail transportation hubs, as well as nearby networks in the city of San Jose. The Project is also designed to provide an active interface with public spaces by facing townhome units toward the Project perimeter and includes 2.12 acres of public park space adjacent to Penitencia Creek.

2.a 1-32: Require development in the Transit area to conform to the adopted design guidelines/requirements contained in the Transit Area Plan.

As discussed above, the Project is consistent with this policy because it has been designed per the adopted design guidelines/requirements contained in the Transit Area Plan. The Project meets all guidelines and requirements of the Transit Area Plan including building setbacks and height, floor area ratio and density, parking, open space and landscaping. It also meets the requirements for access and circulation.

4. In the case of a project located within a Specific Plan, the following additional finding shall be made:

- a. The project is consistent with the Transit Area Specific Plan (TASP).

As described previously in this report, the Project is consistent with the applicable density and block size, building height, setback, building location and auto access and parking standards set forth in Tables 5-1 and 5-3 of Chapter 5, Development Standards and Design Guidelines of the Transit Area Specific Plan, as well as the street design cross sections of Figures 5-9 and 5-11 for local streets and the Capitol Avenue-Milpitas Boulevard Intersection, respectively. In addition, the Project is consistent with Policies 4.43 through 4.45 that address the Trade Zone-Montague subdistrict of the TASP.

Section 6: Applicant proposes to include two swimming pools, one at each of the two buildings on the site. These pools would be for the use of project residents and their guests. Milpitas Municipal Code Section VIII-6-5.000, prohibits the construction of new swimming pools in observance of water conservation efforts and requirements, in the absence of an exception. However, Section VIII-6-5.08 provides that the City Council may grant exceptions to this prohibition. No particular findings are required by the ordinance in order to grant such an exception. Given that the proposed swimming pools would serve several hundred individuals and would offer an attractive amenity, the Planning Commission hereby finds and recommends the City Council find that an exception is warranted in this instance. As with other projects that have sought and received such exceptions, a condition of approval requiring the applicant to forebear from filling the pools until a later date will be imposed in order to ensure the availability of water for such purposes.

Section 7: The Planning Commission of the City of Milpitas hereby recommends the City Council approve the Site Development Permit, Environmental Assessment, and swimming pool exception, subject to and contingent upon the Findings, Conditions of Approval attached hereto as Exhibit 1, particularly including Condition 17, and the FEIR resolution attached hereto as Exhibit 2.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on May 11, 2016:

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on May 11, 2016 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Sudhir Mandal				
Lawrence Ciardella				
Hon Lien				
Rajeev Madnawat				
Ray Maglalang				
Zeya Mohsin (Alternate)				
Demetress Morris				
Gurdev Sandhu				

EXHIBIT 1

CONDITIONS OF APPROVAL 730-750 East Capitol Avenue EA16-0002 and SD15-0014

1. General Compliance. The applicant and owner, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This SITE DEVELOPMENT PERMIT NO. SD15-0014 and ENVIRONMENTAL ASSESSMENT NO EA16-0002 (“Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County’s Recorder Office and a copy shall be provided to the Planning Department. **(P)**
2. Conformance with Approved Plans. The Permittee shall develop the approved project in conformance with the approved plans, sample color and materials board approved by the City Council, in accordance with these Conditions of Approval. **(P)**
3. Modifications to Project. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the Permittee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. **(P)**
4. Conditions of Approval. As part of the issuance of building permits, the Permittee shall include within the first four pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**
5. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. **(ALL)**
6. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the development is not commenced within two (2) years from the date of approval unless in conjunction with a tentative map, the term of which may be extended upon approval by the City or the filing of a final map, then the term of the permits shall coincide with the life of the map. Pursuant to Section XI-10-64.06(B) of the Zoning Ordinance of the City of Milpitas, commencement is defined when the project:
 - A. Completes a foundation associated with the project; or
 - B. Dedicates any land or easement as required from the zoning action; or
 - C. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.

7. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**
8. Project Job Account. If at the time of application for building permit there is a project job account balance due to the City for recovery of review fees, the review of permits will not be initiated until the balance is paid in full. **(E)**.
9. Indemnification. The Permittee shall indemnify, defend with counsel of the City's reasonable choosing, and hold harmless City and its City Council, its boards and commissions, officials, officers, employees, and agents (the "Indemnified Parties") from and against any third party claim, action, or proceeding against City and/or the Indemnified Parties to attack, review, set aside, void, or annul the City's approval of Site Development Permit No. SD15-0014 and/or Environmental Assessment No. EA16-0002. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, reasonable attorneys' fees, and other reasonable expenses incurred in connection with such claim, action, causes of action, suit or proceeding. Permittee shall pay to the City upon demand or, as applicable, on a monthly basis to counsel of City's reasonable choosing, amounts owed pursuant to the indemnification requirements prescribed in this condition, provided each such demand or monthly payment request includes reasonably detailed back-up documentation, including invoices and/or receipts, as applicable, for all amounts to be paid. Notwithstanding the foregoing, City shall have the right to redact invoices and/or receipts as necessary to preserve attorney-client privilege. City shall promptly notify Permittee of any claim, action, or proceeding and shall engage in reasonable efforts to cooperate in the defense. If City fails to so promptly notify Permittee, or if City fails to engage in reasonable efforts to cooperate in the defense, then Permittee's indemnification obligations as set forth in this condition of approval shall thereafter terminate. Permittee shall not be required to pay or perform any settlement unless the settlement is approved by Permittee. To the extent the above indemnification is limited by Government Code Section 66474.9, any limitations shall only apply to Site Development Permit No. SD15-0014 and Environmental Assessment No. P-EA16-0002, and the balance of the Permit shall be unaffected by said Government Code section. **(CA)**
10. Compliance with Fire Department and California Fire Code. Permittee shall comply with the applicable requirements of the Milpitas Fire Department and the California Fire Code as adopted and amended by the City. Changes to the approved site plan and/or building(s) shall require review and approval by the Fire Department. **(F)**
11. Fire Access Road Paving. Fire access roads shall be paved (concrete and/or asphalt cement, and concrete turf block). Fire apparatus access roads/lanes and emergency vehicle roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather capabilities. Design criteria shall be based on the City of Milpitas fire apparatus Sutphen S95 Aerial Platform unit. Please contact the Fire Prevention Division if specifications are needed. CFC Section 503.2.3 **(F)**

12. Fire Hydrant Joint Use Agreement: Permittee shall record a joint use agreement with the developer of the adjacent property to the west at 450 Montague Expressway for perpetual use of a private fire hydrant located on the subject adjacent property. Submit a conformed copy of the recorded agreement for City's file. **(F)**
13. Compliance with Building Department and Codes. Permittee shall comply with the California Building Code, California Mechanical Code, California Electrical Code, California Plumbing Code, Green Building Standards Code, California Energy Code and Milpitas Municipal Code in effect at the time of building permit submittal. **(B)**
14. Public Improvement Design Standards: All public improvements shall be designed and constructed in accordance with current Milpitas design guidelines, (<http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/design-guidelines/>), standard drawings and specifications, (<http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/plans-maps-specifications/>) and Americans with Disabilities Act (ADA) requirements where applicable. **(E)**
15. Encroachment Permit: Prior to any work in the public right-of-way and/or public easement, obtain an encroachment permit with insurance requirements for all public improvements including a traffic control plan per the latest California Manual on Uniform Traffic Control Devices (MUTCD) standards to be reviewed and approved by the Engineering Department. **(E)**

PRIOR TO CONSTRUCTION PLAN SUBMITTALS

The following conditions shall be met **prior to** any detailed construction plan check submittals (Building or Engineering, except demolition and rough grade plans), unless otherwise approved by the Director of Engineering/City Engineer. City reserves the right to reject any plan check submittal if any of the following conditions are not met.

16. Bridge Design: Permittee shall coordinate with the developer to the west and submit the final construction design plans for the East Penitencia Creek Vehicular/Pedestrian Bridge (the "Bridge"), including the landing areas of the subject Bridge, to be approved by the City and by the Santa Clara Valley Water District (SCVWD). Permittee shall incorporate the horizontal and vertical profiles and any constraints of the approved Bridge plan into all building and encroachment permit design plans. **(E)**
17. PG&E Approval: This Permit is conditionally issued contingent upon Permittee's ability to secure the approval of PG&E as to the proposed Project improvements to be placed within the PG&E easements and over the PG&E gas transmission lines on the Project site (see those certain Transmission Pipeline Easement documents recorded February 7, 2014, as Instrument No. 22514531, and December 23, 2014, as Instrument No. 2280615). Permittee shall design all proposed improvements within the PG&E easements and over the existing gas transmission lines consistent with said Transmission Pipeline Easement documents. Permittee shall ensure all proposed improvements within the PG&E easement limits as shown on the Site Development Plan dated March 3, 2016, are acceptable to PG&E, and

shall provide written confirmation from PG&E of the same to the City, subject to the reasonable approval of City. Such written authorization shall be submitted to the City prior to Construction Plan submittals and no building permit or other authorization shall be issued by City until such written confirmation is accepted by City. (E)

18. Solid Waste and Recycling Handling Plan: Permittee shall submit final Solid Waste and Recycling Handling Plan based upon City's previous comments for City's review and approval by the Engineering Department. The subject Plan shall show calculations of waste generation volumes and how materials will be transferred from the waste generation areas to the trash enclosure/external collection point; demonstrate how recycling shall have a separately maintained process from garbage handling; address other requirements such as waste generation and compactor sizing, chute shut-off and property management responsibility for bin management and litter control; and procure sufficient service frequency. (E)
19. Stormwater Control Plan: Permittee shall submit third party certified final Stormwater Control Plan (SWCP) that complies with the latest Municipal Regional Stormwater NPDES Permit, including Low Impact Development (LID) Section C3.c.i.(2)(b) measures for harvesting and reuse, infiltration, or evapo-transpiration, for City's review and approval by the Engineering Department.
20. Photometric Analysis: Permittee shall submit streetlight photometric analysis for City's review and approval by the Engineering Department along Milpitas Boulevard, public park and public trail area that meet the Illuminating Engineering Society of North America (IESNA), RP8, for roadway and sidewalk lighting standards and City standard design guidelines. (E)
21. Recycle Water Cross-Connection Specialist: In order to comply with the California Code of Regulations Title 17 and 22, and for timely plan approval by the California State Water Resources Control Board/Division of Drinking Water as well as by the South Bay Water Recycling, Permittee must hire a certified cross-connection specialist for their consultation as to irrigation water system design and construction phasing. The name and contact information of the certified cross-connection specialist shall be provided on all submittal plans. (E)
22. Utilities: Permittee shall obtain approval of all utility engineering and design to ensure that any proposed public utility relocations on the Project site, as well as within the public right-of-way, are acceptable to the City for perpetual operation/repair/maintenance of City utilities and to optimize utility right-of-way management.
23. Submittal Requirements: Permittee to ensure that all plan check submittals are in accordance with City's submittal check list for each permit type, including but not limited to, payment of permit fees and/or fee deposit at the time of the submittal. (E)
24. Project Job Account/Fee Deposit: Permittee shall open a new PJ account as a deposit to cover the costs for Engineering Department's services for review and inspection of the project. The

amount shall be at 10% of the public improvement cost estimates as prepared by the Permittee's engineer. **(E)**

PRIOR TO BUILDING PERMIT ISSUANCE

The following conditions shall be addressed during the building permit plan check process and shall be met **prior to** any building permit issuance (except demolition permit and rough grade permit), unless otherwise approved by the Director of Engineering/City Engineer.

25. Dedications/Abandonments: Permittee shall submit to the City for review and approval by the Engineering Department with recordation of a Lot Line Adjustment and other instruments, including but not limited to the following:
 - a) Offer and acceptance of dedication of South Milpitas Boulevard within the Project property limits. The exact limits of the irrevocable offer of dedication shall be consistent with the approved Bridge plans as conditioned herein.
 - b) Offer and dedication of appropriate strip of land fronting Capitol Avenue in the form of easement for public street and utility purposes to accommodate roadway frontage improvements as required by the Transit Area Specific Plan (TASP).
 - c) Offer and acceptance of dedication of a twenty-six feet (26') Emergency Access Easement (EAE) along private Street 'C' on Lot 1 and private access road on Lot 2;
 - d) Offer and acceptance of dedication of Public Access Easement over the public park, Street C and EVE areas.
 - e) Offer and acceptance of dedication of Bicycle and Pedestrian Trail Easement over the EVE.
 - f) Offer and acceptance of dedication of Public Service and Utility Easement (PSUE) for public utilities where applicable;
 - g) Elimination of any temporary easement(s) or unnecessary private easements;
 - h) Quitclaim deed for the existing PG&E easement in conflict with the proposed building on Lot 1.
 - i) Abandonment of existing slope easement and two Public Service Easements along Capital Avenue in accordance with the California Streets and Highways Code.
26. Modifications: The Site Development Plan dated March 3, 2016 is subject to change during the plan check stage based upon City's previous comments and conditions stated herein. **(E)**
27. Bicycle and Pedestrian Trail Connection: Permittee shall submit design plans for a Class I multi-use trail which adheres to the standards set forth in the Milpitas Bikeway Master Plan and to the satisfaction of the Directors of Planning, Recreation and Engineering. Final bikeway design shall ensure that the trail connects to the Project site to the west and to the Lundy Street spur trail to the southeast.
28. Bicycle and Pedestrian Trail Spur: Permittee shall submit design plans for Class I multi use trail spur which adheres to the standards set forth in the Milpitas Bikeway Master Plan and to the satisfaction of the Directors of Planning, Recreation and Engineering. Final spur trail design shall ensure connection to both Lundy Street to the southeast, and to the public trail directly to the west. City recognizes that construction of trail spur is contingent upon

approval and permits/agreements with City of San Jose and SCVWD as needed and as required. Permittee shall be solely responsible for completing all required negotiations with these entities and securing any and all agreements, modifications to existing agreements and required permits for trail construction and operation.

29. Sanitary Sewer Calculations: Permittee shall submit a completed “Sewer Needs Questionnaire” form and sanitary sewer calculations to justify lateral size design and allocation of discharge for each of the lateral. (E)
30. Storm Drain Design: Permittee shall submit storm drain hydrology and hydraulic calculations based upon a 10-year storm event to justify the size of the storm drain lateral flowing full, without surcharging the main line pipe, and to be reviewed and approved by the Engineering Department. (E)
31. Stormwater Facility Operation & Maintenance Plan: Permittee shall incorporate design details into applicable construction plans in accordance with City approved Storm Water Control Plan (SWCP). Permittee shall also submit Stormwater Facility Operation & Maintenance Plan that describes operation and maintenance procedures needed to ensure that treatment Best Management Practices (BMPs) and other storm water control measures continue to work as intended and do not create a nuisance (including vector control). (E)
32. Domestic Water and Fire Service Calculations: Permittee shall submit potable water and fire service calculations to confirm adequacy of lateral size, pressure and flow, to be reviewed and approved by the Engineering Department and Fire Department. Hydraulic modeling analysis by the City and paid by the Permittee may be required as needed. The project site shall be served by the SCVWD Zone 2. (E)
33. Water Supply and Force Majeure. The City reserves the right to suspend the issuance of building permits in case of an emergency declaration of water supply in the case of a major catastrophic event that restricts City’s assurance to provide water supply. (E)
34. Recycle Water Approval: Permittee shall use recycled water for landscape irrigation purpose, except for the interior courtyard/podium areas within the building footprint where the potable water shall be used for irrigation. Permittee shall comply with California Code of Regulations (CCR), Title 22, Division 4, Chapter 3, titled “*Water Recycling Criteria*”, CCR, Title 17, Division 1, Chapter 5, Subchapter 1 titled “*Drinking Water Supply*” and all other recycled water regulations as listed under the publication titled “*California Department of Public Health Regulations Related to Recycled Water June 18, 2014*”. Permittee shall obtain approval from the California State Water Resources Control Board/Division of Drinking Water, South Bay Water Recycling and the City for recycled water design, including but not limited to on-site irrigation design, based upon South Bay Water Recycling Guidelines and City of Milpitas Supplemental Guidelines. All landscape plants shall be compatible with recycled water. (E)
35. Water Efficient Landscapes: Permittee shall comply with Milpitas Municipal Code Title VIII, Chapter 5 Water Efficient Landscapes for landscape design, including but not limited

to, providing separate water meters for domestic water service and irrigation service and providing applicable landscape documentation package. (E)

36. Dewatering. If dewatering is needed during construction, Permittee shall obtain a Short-Term Industrial Wastewater Permit from the San Jose/Santa Clara Water Pollution Control Plant for discharging the groundwater to a sanitary sewer system. (E)
37. Utility Company Approval: Permittee shall obtain approval letters from utility companies (PG&E, AT&T, AT&T Broadband) for abandonment of existing and dedication of new public service utilities easements. (E)
38. Solid Waste and Recycling Facility Design: Permittee shall comply with all applicable City design guidelines/details associated with haul route, turning radius, vertical and horizontal clearance, trash enclosure, staging area, storage area, etc. (E)
39. Recycling Report Prior to Demolition Permit Issuance: Permittee shall submit Part I of a Recycling Report on business letterhead to the Building Department, for forwarding to the Engineering Department for review and approval. The report shall describe the following resource recovery activities:
 - a) What materials will be salvaged.
 - b) How materials will be processed during demolition.
 - c) Intended locations or businesses for reuse or recycling.
 - d) Quantity estimates in tons (both recyclable and for landfill disposal). Estimates for recycling and disposal tonnage amounts by material type shall be included as separate items in all reports to the Building Division before demolition begins.

Permittee shall make every effort to salvage materials for reuse and recycling, and shall comply with the City's demolition and construction debris recycling ordinance. (E)

40. Recycling Report Prior to Building Permit Issuance: Permittee shall submit Part II of the Recycling Report to the Building Department, for forwarding to the Engineering Department. Part II of the Recycling Report shall be supported by copies of weight tags and/or receipts of "end dumps." Actual reuse, recycling and disposal tonnage amounts (and estimates for "end dumps") shall be submitted to the Building Department for approval by the Engineering Department prior to inspection by the Building Department. (E)
41. Grease Interceptor: Provide grease interceptors for buildings with food service. Contact SJ/SC WPCP Senior Source Control Inspector at (408)277-3897 for sizing and location requirements for grease interceptor(s). No grease interceptor(s) shall be located in any public right-of-way or public easement areas. (E)
42. Flood Plain Management: This project is in the Flood Zone "AO" with 1' average flood depth, therefore, Permittee shall comply with all applicable flood protection criterion required by the Federal Emergency Management Agency (FEMA) and MMC Title XI, Chapter 15. Permittee shall also submit a Flood Study for the Project demonstrating, to the satisfaction of the City Engineer, that the proposed development has no adverse impact to the

surrounding flood plain within the Special Flood Hazard Area (SFHA) and to the flood carrying capacity of the area. The study should include cumulative effects of existing and proposed developments demonstrating the combined effects will not increase the water surface elevation of the Base Flood Elevation (BFE) more than one foot at any point. For the AO Flood Zone, the flood study is required to establish the BFE, and set the building elevation accordingly. The flood study shall be consistent with the requirements in accordance with Title 44 of the Code of Federal Regulations by establishing a hydraulic model and HEC-RAS. The study shall clearly identify the lowest floor elevation as being either the bottom of garage, bottom of first floor residential units, bottom of elevator pit, etc. and shall be completely elevated out of the SFHA. (E)

43. Horizontal Clearance: Permittee shall maintain a minimum 10' net horizontal clearance between the outside pipes of any City maintained utilities and the outside edge of building foundations/exterior walls. (E)
44. Notice of Covenant: Permittee shall execute and record a "Notice of Covenant for Private Improvements Encroaching into Public Easements" for all encroached private improvements. (E)
45. Annexation to the Community Facilities District: Permittee shall submit an executed petition to annex the subject property to the Community Facilities District (CFD) 2008-1, and agree to pay the special taxes levied by the CFD 2008-1 for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized concurrently with any building permit issuance. Permittee shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. This condition of approval is nonseverable from the Permit and invalidation or limitation of this condition invalids the Permit. (E)
46. Concurrent Off-site Plan Reviews: Permittee shall submit separate off-site improvement plans for City's review and ready to be approved by the Engineering Department. (E)
47. Development Fees. Permittee shall pay the following development fees. The information listed in items "a" through "h" are based upon current fee rates; however, those fee rates are subject to change. The exact fee amount shall be determined at the time of building permit fee payment.
 - a) Transit Area Specific Plan fee at \$32,781/unit for residential and \$22.80/SF for commercial.
 - b) Parkland Dedication fees-in-lieu for any balance of parkland requirements not already met through the payment of TASP fees and/or the provision of public parkland and private recreation space, as to the satisfaction of the Directors of Planning and Engineering. Credit for public parkland dedication or private recreation greater than what is required shall not be given against any other fees or payments.
 - c) Lot Line Adjustment Fee in the amount of \$615.
 - d) Storm water connection fee at \$16,771/acre for residential and \$21,562/acre for commercial.

- e) Water connection fee at \$1,164/unit for residential and \$5.97/gpd for commercial, based upon increased water usage.
- f) Sewer connection fee at \$1,406/unit for residential and \$8.52/gpd for commercial, based upon increased average wastewater flow.
- g) 2.5% of applicable fees in accordance with City Resolution No. 7590 as Permitting Automation Fee.
- h) FEMA Flood Zone Designation Letter fee in the amount of \$100.00 each. **(E)**

PRIOR TO ENCROACHMENT PERMIT ISSUANCE

The following conditions shall be addressed as part of the off-site improvement plan review and shall be met **prior to** encroachment permit issuance, unless otherwise approved by the Director of Engineering/City Engineer.

48. Specific Improvements: In addition to standard public improvements required under Milpitas Municipal Code (MMC) Title XI, Chapter 1, Section 7, Permittee shall install other specific improvements listed below including incidental improvements as required by the City as part of the encroachment permit. **(E)**

- a) Installation of new public street (Milpitas Boulevard) and associated public utilities and streetscapes. **(E)**
- b) Installation of new and/or removal/relocation of existing traffic signal facilities at the southeast and southwest corner of Capital Avenue and Milpitas Boulevard. **(E)**
- c) **(E)**
- d) Modification at the entry/exist way for Street B on adjacent property to the west based upon an ultimate design plan, if needed based upon previously City approved ultimate design plan at the subject entry/exit way. **(E)**
- e) Underground existing overhead facilities along the frontage of Capitol Avenue per MMC Title XI, Chapter 1, Section 7.02-2. **(E)**
- f) Installation of concrete pavement and “No Parking, Loading Zone” signs and posts at the duck-out bay areas along Milpitas Boulevard and Street C to City’s satisfaction. **(E)**
- g) Installation of separate water meter for each of the following services: residential, non-residential, irrigation, and fire. **(E)**
- a) Installation of radio-transmitted water meters with a meter antenna, any repeaters or transmitters as needed with dedicated power supplies at no cost to the City at locations acceptable to the City to ensure accurate and timely reception of meter readings. Permittee shall execute a recorded instrument providing dedicated space, access rights and dedicated power supplies to the City for operation/maintenance/repair/replacement of subject radio antenna. **(E)**
- i) Installation of Type II slurry seal along the Capitol Avenue frontage to the median islands. **(E)**

49. Improvement Agreement and Securities: Permittee shall execute an Improvement Agreement and provide improvement securities in accordance with MMC Title XI, Section 17, and submit all other supplemental documents as stipulated in the Improvement Agreement (such as certificate of insurance). **(E)**

50. Compliance with Other Project Conditions: Permittee shall coordinate with the developer to the west of the project site to comply with applicable provisions stipulated in Milpitas Resolution No. 15-003 Conditions of Approval No. 38 associated with the West Leg of South Milpitas Boulevard Extension, including the East Penitencia Creek Vehicular/Pedestrian Crossing and related utility relocations, including but not limited cost share. **(E)**
51. Maintenance Agreement: Permittee shall record a Maintenance Agreement for perpetual maintenance of certain public improvements mutually agreed between the City and the Permittee. **(E)**
52. Water Service Agreement: Permittee shall complete a water service agreement to obtain water service. **(E)**

DURING CONSTRUCTION

The following conditions shall be complied with at all times **during** the construction phase of the project, unless otherwise approved by the Director of Engineering/City Engineer.

53. On-site Recycle Water Coordination: Permittee's cross-connection specialist shall coordinate the phasing of the construction; facilitate the cross-connection testing in order to minimize the impact for occupied buildings during cross-connection testing; sign-off before the water meter set; coordinate on-site construction inspection; complete the site inspection; fill out required paperwork/questionnaire; and provide them to the City for forwarding to South Bay Water Recycling. **(E)**
54. Prohibition of Potable Water Usage: Permittee shall use recycled water for construction purposes, including dust control and compaction. Permittee shall comply with MMC VIII-6-5.00 and 6-6.00 where potable water usage is prohibited, unless otherwise approved by the City Council. **(E)**
55. Construction Staging and Employee Parking: Permittee shall place all construction related materials, equipment, and arrange construction workers parking on-site and not located in the public right-of-ways or public easements. **(E)**
56. Elevation Certificates: Permittee's civil engineer shall complete and submit several FEMA Elevation Certificates to the City at different stages of the construction, if applicable. **(E)**

PRIOR TO FIRST OCCUPANCY

The following conditions shall be met **prior to** first building occupancy on either lot, unless otherwise approved the Director of Engineering/City Engineer.

57. Completion of Public Improvements: Permittee shall complete all public improvements, including but not limited to Milpitas Boulevard, frontage improvements along Capitol Avenue, bicycle path, pedestrian and bicycle trail, traffic signal modifications and public park, as shown on City approved plans. **(E)**

56. Stormwater Management Facilities O&M Agreement: Permittee shall execute and record a Stormwater Management Facilities Operation and Maintenance (O&M) Agreement associated with the SWCP O&M Plan, including perpetual maintenance of treatment areas/units, as reviewed and accepted by the Engineering Department.
57. Landscape Certificate: Permittee shall submit a Certificate of Substantial Completion that complies with the Milpitas Municipal Code Water Efficient Landscapes ordinance. (E)
58. Certificate of Cross-Connection: Permittee shall ensure that the cross-connection specialist complete the required recycled water construction inspection checklist, cross connection test results and any special inspection checklist as required by the South Bay Recycling Program <http://www.sanjoseca.gov/index.aspx?NID=1595> and forward them to the City. (E)
59. Record Drawings: Permittee shall submit record drawings in pdf format for City records. (E)
60. Private Job (PJ) Balance: Permittee shall pay for any remaining balance from the Private Job deposit. (E)
61. Unless exceptions thereto are specifically authorized herein, Permittee shall comply with all applicable provisions of the Milpitas General Plan, Transit Area Specific Plan, Milpitas Municipal Code, and all other City standards and regulations.
62. Unless otherwise noted, City ordinances and other applicable laws shall mean the requirements in effect at the time of building permit issuance.
63. Swimming Pools: Pursuant to Milpitas Municipal Code Section VIII-6-5.08, Permittee is granted an exception from the City's prohibition on the construction of swimming pools. By virtue of this exception, Permittee is authorized to construct one swimming pool at each of the two buildings approved for construction through this Permit. Permittee shall not fill any swimming pool at the Project until such time as authorized by the City of Milpitas.
64. CEQA Review (2008 TASP FEIR): The Project shall be subject to all applicable policies and/or mitigation measures required in the TASP EIR. At the time of building permit submittal, Permittee shall submit a written report demonstrating how the Project complies with these TASP policies and/or mitigation measures to the satisfaction of the Planning Director.

Key:

- (P) = Planning
(B) = Building
(E) = Engineering
(F) = Fire Prevention
(CA) = City Attorney

NOTICE OF RIGHT TO PROTEST

The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), began on date of adoption of this resolution. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

Pursuant to Condition No. 47 contained herein, prior to any building permit issuance, Permittee shall pay the applicable Transit Area Specific Plan Development Impact Fee as determined by the City Council at the time of project approval.

AGREEMENT

Permittee/Property Owner

The undersigned agrees to each and every condition of approval and acknowledges the NOTICE OF RIGHT TO PROTEST and hereby agrees to use the project property on the terms and conditions set forth in this resolution.

Dated: _____

Signature of Permittee